

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

**CARREN RANDELL,**

**05-CV-1231-AS**

**Plaintiff,**

**ORDER**

**v.**

**JO ANNE B. BARNHART,  
Commissioner of Social Security,**

**Defendant.**

**CARREN RANDELL  
675 SW Alder Dr.  
Dundee, OR 97115**

*Plaintiff, Pro Se*

**KARIN J. IMMERMUTH**  
United States Attorney  
**NEIL J. EVANS**  
Assistant United States Attorney  
1000 S.W. Third Avenue, Suite 600  
Portland, OR 97204-2902  
(503) 727-1053

**MICHAEL McGAUGHRAN**

Office of the General Counsel

**RICHARD RODRIGUEZ**

Special Assistant United States Attorney  
Social Security Administration  
701 5<sup>th</sup> Avenue, Suite 2900 M/S 901  
Seattle, WA 98104-7075  
(206) 615-3748

Attorneys for Defendant

**BROWN, Judge.**

Magistrate Judge Donald C. Ashmanskas issued Findings and Recommendation (#31) on October 5, 2006, in which he recommended the Court deny Plaintiff's Motion to Reopen the Case (#27) pursuant to Federal Rule of Civil Procedure 60(b). Defendant filed a "Response" to the Findings and Recommendation, which the Court construes as an objection. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988); *McDonnell Douglas Corp. v. Commodore Business Mach., Inc.*, 656 F.2d 1309, 1313 (9<sup>th</sup> Cir. 1981), cert. denied, 455 U.S. 920 (1982).

In her Response, Defendant requested the Court to resolve Defendant's Motion on procedural grounds; specifically, to deny

the Motion on the ground that Plaintiff failed to serve the Motion on Defendant. This Court has carefully considered the substance of Plaintiff's Motion to Reopen Case and Defendant's procedural Objections. The Court also has reviewed the pertinent portions of the record *de novo*, and does not find any error in the Magistrate Judge's Findings and Recommendation. The Court concludes the Findings and Recommendation should be affirmed on substantive grounds: *i.e.*, Plaintiff has not produced evidence sufficient to justify vacating the Judgment of Dismissal entered on June 27, 2006.

**CONCLUSION**

The Court **ADOPTS** Magistrate Judge Ashmanskas's Findings and Recommendation (#31) and, accordingly, **DENIES** Plaintiff's Motion to Reopen the Case (#27).

IT IS SO ORDERED.

DATED this 18<sup>th</sup> day of December, 2006.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge